

In The United States District Court
For The Middle District of Alabama
Southern Division

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JONEL HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Brian Scott Pate, #229345	X
Petitioner, Pro-Se	X
V.	X Case # 1:06-CV-500 MHT
Terrance McDonnell, Warden, et, al.	X
Respondents	X

Objection to Magistrate Judge Recommendation

Comes now the Petitioner, Brian Scott Pate, Pro-se, and respectfully objects to the Magistrate's Recommendation to Dismiss his Petition, for failure to pay the \$5.00 filing fee. In support of this objection the Petitioner states and shows just cause as follows:

- 1.) On February 6, 2006 Petitioner filed his 28 U.S.C. § 2254 Petition with the Southern District of Alabama; United States District Court, Petitioner believing that Houston County Alabama, was in the Southern District.
- 2.) On February 27, 2006 Petitioner recieved, in a seperate envelope, from the Southern District Court an Order that within 15 days Petitioner shall remit to the Clerk of the Southern District Court a \$5.00 filing fee, made Payable to "Charles R. Diard, Jr., Clerk" before transfer of Petition could be made to the Middle District Court, Dated February 21, 2006.

- 4.) On March 2, 2006, since Petitioner was without funds on his inmate account, his sister in Tennessee mailed a \$5.00 Money Order to the Southern District Court, made Payable to "Charles R. Diard, Jr., clerk", Travelers Express Money Order #54842705434.
- 5.) On June 1, 2006 Petitioner received an order from the Southern District Court, transferring said Petition to the United States Court for the Middle District of Alabama. Dated; May 30, 2006
- 6.) On June 8, 2006 Petitioner received an Order on Motion from the Middle District Court, Ordering Petitioner to Show Cause on or before June 19, 2006, why his Petition should not be Dismissed for failure to comply with the Order from the Southern District, entered on February 21, 2006 to pay the \$5.00 filing fee. Dated; June 7, 2006.
- 7.) On June 12, 2006, Petitioner sent a copy of the Money Order Stub, that was sent to the Southern District on March 2, 2006, to pay the \$5.00 filing fee, along with a letter of explanation, to the United States District Court for the Middle District of Alabama, Southern Division.
- 8.) On June 26, 2006 Petitioner received the Recommendation of the Magistrate Judge, that the Petitioner is Here-to Objecting.

As supported by the Money Order stub and the fact that the Southern District would not transfer the Petition before receipt of payment of the \$5.00 filing fee, Petitioner asserts that he has paid the Southern District a \$5.00 filing fee. Petitioner, by the language of all orders by both this Court and the Southern District Court, was un-aware that he was required to also pay a \$5.00 filing fee to the Middle District Court. Petitioner has enclosed a \$5.00 filing fee, made Payable to the, "Clerk - Debra P. Hackett, United States District Court for the Middle District of Alabama, Southern Division.

Therefore for just cause shown, the Petitioner respectfully objects to the Magistrate's Recommendation to Dismiss his Petition for failure to pay the \$5.00 filing fee and prays this Honorable Court will accept the \$5.00 filing fee enclosed and continue the case.

(Please see Attachments Enclosed)

Respectfully Submitted
on June 27, 2006.

Brian Scott Pate

Brian Scott Pate
Petitioner, Pro-se

CIC. FILE

Brian Scott Pate

Alis#229345

P.O. Box 150

Mt. Meigs, Al. 36057

cc: File

reference TO: Southern
District

: Civil Action 06-0075-KD-C

: Middle District:

: 1:06-CV-00500-MHT-DRB

June-11, 2006

Enclosed is a copy of the money-order that was sent to the Southern District Clerk. Also enclosed is a copy of the letter from them that told me to make the money-order payable to "Charles R. Diard, Jr; Clerk. Please check with them to make sure that they recieved my money-order. I do appoligize for any incovience. I was under the impression that Houston County was under the Southern District jurisdiction. If there are any other problems please let me know.

Thank You for your time and consideration

Brian Scott Pate

Brian Scott Pate

Alis#229345

P.O. Box 150

Mt. Meigs, Al. 36057

TRAVELERS EXPRESS COMPANY, INC. DRAWER
P.O. BOX 9478, MINNEAPOLIS, MN. 55480
1-800-542-3590
PLEASE SEE TERMS ON REVERSE SIDE

DATE/AMOUNT

54842705434	06/06
1201	15.00
155576212020317	42

KEEP THIS STUB
FOR YOUR RECORDS

54842705434

EMPLOYEE

↓ DETACH HERE ↓

SERVICE CHARGE:

If this Money Order is not used or cashed (presented for payment) within one year (three years in CA) of the purchase date, there will be a non-refundable service charge where not prohibited by law. The service charge will be deducted from the amount of payment shown on the Money Order. The service charge is thirty-five cents (twenty-five cents in CA) per month from the date of purchase, but not more than \$29.40 (\$21 in CA).

FOR

TO Charles R. David Jr
Clerk
Civil Act Case
06-0075-KD-C